

(3) When a complaint concerning a proposal to take an action appealable to the MSPB is combined with a mixed case complaint concerning an Army decision appealable to the MSPB, the 120-calendar-day time frame for processing the consolidated complaint begins as of the date the complaint concerning the Army decision is filed.

(4) When a complaint is filed on a proposal, and no appeal or complaint is filed with the NSPB or the Army on the subsequent appealable Army decision resulting from that proposal, the complaint on the proposal will include the final appealable Army decision as an issue. The 120-calendar-day time-frame will begin as of the effective date of the final appealable decision.

(g) *Mixed case advise.* Sample language advising complainants of their rights under mixed case procedures is at appendix D. In age discrimination complaints, a complainant must appeal the Army decision to the EEOC or MSPB before filing a civil action in a Federal District Court.

§ 588.47 Negotiated grievance procedure.

A complainant who is covered by a collective bargaining agreement may file allegations of discrimination or reprisal under the negotiated grievance procedure instead of filing under this regulation. The complainant has this grievance option if the negotiated grievance procedure does not exclude allegations of discrimination or reprisal. When using the negotiated grievance procedure, a complainant is bound by the negotiated agreement.

§ 588.48 Election of forum.

(a) In a mixed case, the complainant may initially choose either the individual complaint procedure as described in subpart B of this regulation, appeal the the MSPB, or use the negotiated grievance procedure. The rules for choosing the procedure are not the same in all situations. An election will have been made when the following action occur:

(1) An MSPB appeal will not be accepted if a timely discrimination complaint or a grievance under the nego-

tiated procedure has been filed in writing.

(2) A discrimination complaint will not be accepted if a timely appeal to the MSPB or a timely grievance under the negotiated procedure has been filed in writing.

(3) A grievance under the negotiated procedure will not be accepted if a timely appeal to the MSPB has been filed in writing or if the complainant has initiated timely action under subpart B of this regulation. If the negotiated grievance procedure is used, the employee may ask the MSPB to review the final decision made under the negotiated procedure. (See § 588.49.)

(b) In a matter involving discrimination covered by the negotiated grievance procedure, but not appealable to the MSPB, the complainant may choose either the complaint procedure as described in subpart B or use the negotiated grievance procedure.

(1) The choice is made when a timely grievance is filed in writing under a negotiated procedure or when the employee files a formal complaint under subpart B.

(2) An employee who chooses the negotiated grievance procedure may ask the EEOC to review the final decision made under that negotiated procedure. (See § 588.49.)

§ 588.49 Final decision under the negotiated grievance procedure.

For seeking review by the EEOC or the MSPB, a final decision under the negotiated grievance procedure is defined as one of the following:

(a) The final grievance decision rendered by the activity, if the union fails to invoke arbitration of the grievance (an employee cannot individually invoke arbitration.)

(b) The award rendered by an arbitrator, if neither the union nor management files an exception to the award with the Federal Labor Relations Authority (FLRA) (an employee cannot individually appeal an arbitration award to the Authority) or an arbitrator's award that cannot be appealed to the FLRA.

(c) The decision of the FLRA on appeal of an arbitration award.